

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

**ROBERT CHAMBERS,
et, al.**

PLAINTIFF

v.

CAUSE NO. 3:20-CV-58-CWR-LRA

**CITY OF JACKSON, MISSISSIPPI;
OFFICER KENNETH SHORT individually
And in his official capacity;
JOHN and JANE DOES 1-10**

DEFENDANTS

**ANSWER AND AFFIRMATIVE DEFENSES OF
KENNETH SHORT TO AMENDED COMPLAINT**

COMES NOW, the Defendant, KENNETH SHORT, by and through counsel, and files this his Answer and Affirmative Defenses to the Plaintiff's Complaint, and in support thereof states the following, to wit:

GENERAL DENIAL

Irrespective of any inadvertent admission herein, this Defendant generally denies each and every allegation that directly or indirectly asserts any liability, negligence or other wrongdoing against him. This Defendant further denies that the Plaintiff is entitled to a judgment against him based on the claims and the facts alleged.

AFFIRMATIVE DEFENSE NO. 1

Plaintiff's Complaint fails to state a claim upon which relief may be granted against this Defendant.

AFFIRMATIVE DEFENSE NO. 2

This Defendant in his individual capacity is entitled to qualified immunity and/or statutory immunity.

AFFIRMATIVE DEFENSE NO. 3

This Defendant was acting at all times in his capacity as a police officer with the Jackson Police Department. He is therefore entitled to qualified immunity for all acts relating to any matter alleged in Plaintiff's Complaint. Said acts were not done or taken in violation of any clearly established statutory or constitutional rights of which this Defendant knew or should have known about.

AFFIRMATIVE DEFENSE NO. 4

This Defendant used the degree and care required under law and department policy and is therefore not liable to the Plaintiff.

AFFIRMATIVE DEFENSE NO. 5

This Defendant is absolutely immune from any individual liability under 42 U.S.C. §1983.

AFFIRMATIVE DEFENSE NO. 6

Plaintiff is not entitled to recover punitive damages under state law or federal law, particularly 42 U.S.C. §1983.

AFFIRMATIVE DEFENSE NO. 7

This Defendant is entitled to sovereign immunity in that he was at all times an arm of a government body and was acting in good faith and in accordance with the laws and/or policies of that government body.

AFFIRMATIVE DEFENSE NO. 8

At all times, this Defendant acted reasonably and in good faith reliance upon the existing law, and is therefore entitled to qualified immunity and/or absolute immunity for all claims alleged.

AFFIRMATIVE DEFENSE NO. 9

This Defendant is entitled to immunity under Mississippi Code § 11-46-9. Furthermore, all claims are barred by the Mississippi Tort Claims Act and/or Section 99-3-23.

AFFIRMATIVE DEFENSE NO. 10

The Complaint is barred by the doctrine of laches and should therefore be dismissed with prejudice.

AFFIRMATIVE DEFENSE NO. 11

The Complaint, and/or certain claims therein are barred by the applicable statute of limitations and should therefore be dismissed with prejudice with all costs assessed against Plaintiffs.

AFFIRMATIVE DEFENSE NO. 12

Plaintiff assumed the risk.

AFFIRMATIVE DEFENSE NO. 13

The Plaintiff's damages, if any, were caused and/or contributed to by the acts and/or omissions of others.

AFFIRMATIVE DEFENSE NO. 14

Any damages sustained by Plaintiffs were solely and proximately caused and/or contributed to by the unforeseeable, intervening or superseding causes.

AFFIRMATIVE DEFENSE NO. 15

Plaintiff has failed to mitigate their damages.

AFFIRMATIVE DEFENSE NO. 16

Plaintiffs' claims of intentional and/or negligent infliction of emotional distress are specifically barred by Miss. Code Ann. §11-46-9(1)(c).

AFFIRMATIVE DEFENSE NO. 17

At all material times, this Defendant used the degree of care required of him under law.

AFFIRMATIVE DEFENSE NO. 18

Plaintiff's claims are barred as Plaintiff was engaged in criminal, unlawful and/or illegal activity.

AFFIRMATIVE DEFENSE NO. 19

This Defendant asserts any and all other defenses available to him under Miss. Code Ann. §85-5-7 and §11-1-65.

AFFIRMATIVE DEFENSE NO. 20

This Defendant invokes and asserts all privileges and immunities afforded to him under the federal and state constitutions and statutory and common law.

AFFIRMATIVE DEFENSE NO. 21

This Defendant affirmatively pleads that Plaintiff's claims under the Fourth Amendment, are barred, as the totality of the circumstances and/or events as set forth in the Complaint, do not show that any particular use of force was clearly unreasonable or clearly excessive.

ANSWER

1. Denied.
2. Denied.
3. This Defendant admits citing the Plaintiff. The remainder of the allegations are denied.
4. Denied.
5. Denied.
6. Denied.
7. Admitted.
8. Denied to the extent that the allegations are directed to this Defendant.
9. Denied.
10. Denied.
11. Denied.
12. Admitted.
13. Denied.
14. Denied.
15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. There are no paragraphs 22-29. Accordingly, the same are denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied. Paragraphs 30–34 are not in sequential order in the Plaintiff's Complaint.

31. Denied.

32. Denied.

33. Denied.

34. Denied. The Complaint has two paragraph 34's which are both denied.

35. Denied.

36. Denied

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

AND NOW, having fully answered the Complaint, this Defendant demands that he be dismissed from this case with all costs assessed to the Plaintiff.

Respectfully submitted, this the 21st day of April, 2020,

KENNETH SHORT, Defendant

By: /s/ Michael V. Cory, Jr.

Michael V. Cory, Jr. (MSB#9868)

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, Michael V. Cory, attorney for KENNETH SHORT, do hereby certify that I have delivered a true and correct copy of the foregoing document via ECF to all counsel of record.

/s/ Michael V. Cory, Jr.

Michael V. Cory, Jr.